

Bardhyll v Welch

2025 NY Slip Op 33858(U)

October 8, 2025

Supreme Court, New York County

Docket Number: Index No. 805268/2021

Judge: Kathy J. King

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY J. KING PART 06

Justice

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KUJTIM S. BARDHYLL as Administratrix of the Estate of
ADRIANA CIVULI, and KUJTIM S. BARDHYLL,

Plaintiffs,

INDEX NO. 805268/2021

MOTION DATE 10/26/2023

MOTION SEQ. NO. 001

- v -

GEORGE N. WELCH, RICHARD SCOTT SCHAFER,
MANHATTAN CARDIOLOGY, P.C., MANHATTAN
CARDIOLOGY A/K/A MANHATTAN CARDIOLOGY/
MEDICAL OFFICES OF MANHATTAN, and MEDICAL
OFFICES OF MANHATTAN A/K/A MANHATTAN
CARDIOLOGY/MEDICAL OFFICES OF MANHATTAN,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and oral argument having been heard, Defendants George Welch, M.D. (“Dr. Welch”), Richard Schafer, M.D. (“Dr. Schafer”), and Manhattan Cardiology, P.C. s/h/a Manhattan Cardiology, P.C., Manhattan Cardiology a/k/a Manhattan Cardiology/Medical Offices of Manhattan and Medical Offices of Manhattan a/k/a Manhattan Cardiology/Medical Offices of Manhattan (“Manhattan Cardiology”) (collectively referred to as “the Moving Defendants”) move for summary judgment, pursuant to CPLR 3212, dismissing the Plaintiffs’ Complaint and entering judgment against the Plaintiffs, with statutory costs and disbursements with the Clerk of the Court.

Plaintiff, Kujtim Bardhyll (“Plaintiff”), as Administratrix of the Estate of Adriana Civuli (“Decedent”), opposes the motion.

BACKGROUND

In February 2019, Decedent, the then 27-year-old spouse of Plaintiff, presented to non-party internist, Dr. Anisha Patel at Manhattan Cardiology. An electrocardiogram (“EKG”) revealed that she had an electrical conduction abnormality in the heart a/k/a left bundle branch block (“LBBB”). The Decedent had no complaints and symptoms, and the examination was otherwise normal.

The Decedent was referred to cardiologist, Dr. Schafer, also at Manhattan Cardiology, where, March 1, 2019, she underwent an evaluation, including a transthoracic echocardiogram (TTE). The results of the TTE were interpreted as normal by Dr. Schafer and, again, by Dr. Welch on March 3, 2019. Decedent once again expressed no complaints or symptoms, and her physical examination was normal. She was instructed to return for a follow-up EKG in one year but did not. On September 23, 2020, the Decedent suffered an acute cardiac arrest at home. She was taken by EMS to the hospital where she was pronounced dead on arrival. The Medical Examiner’s report indicated that the cause of death was “fatal/terminal cardiac arrhythmia due to myocardial hypertrophy and dilation.”

Thereafter, on September 1, 2021, Plaintiff commenced this matter by filing a Summons and Complaint, sounding in medical malpractice against the Moving Defendants, alleging that the abnormal EKG and the echocardiogram (TTE) were misinterpreted by said Defendants, and that more immediate intervention should have been taken at that time to prevent the Decedent’s sudden cardiac arrest 18 months later. Plaintiff also assert claims for lack of informed consent, wrongful death, and loss of consortium arising from the alleged malpractice of Dr. Welsh and Dr. Schafer on March 1, 2019.

As to Defendant Manhattan Cardiology, Plaintiff alleges negligent hiring and supervision. While Plaintiff's complaint does not include direct claims against Manhattan Cardiology, Plaintiff seeks to hold Manhattan Cardiology vicariously liable for the alleged malpractice of the Defendant physicians.

The Moving Defendants interposed their answers on October 12, 2021, and October 22, 2021, respectively, and now move for summary judgment dismissing the Plaintiff's Complaint.

LEGAL STANDARD FOR SUMMARY JUDGMENT

A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice, and by establishing that the plaintiff was not injured by such treatment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept 2009]; *McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; *see generally Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]). To satisfy this burden, a defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific, and factual in nature (*see Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Joyner-Pack v Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]).

Once the proponent of a summary judgment motion makes a showing of entitlement to dismissal by tendering evidence sufficient to demonstrate the absence of material issues of fact, the burden shifts to the non-moving party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action"

(see *Alvarez*, 508 NYS2d at 925; see also *Menzel v Plotnick*, 202 AD2d 558 [2d Dept 1994]; *Salamone v Rehman*, 178 AD2d 638 [2d Dept 1991]).

SUMMARY JUDGMENT AS TO MEDICAL MALPRACTICE

In support of the motion of the Moving Defendants, Dr. Schafer submits the expert affidavit of Dr. Stanley J. Schneller, M.D. (“Dr. Schneller”), a board-certified physician in Internal Medicine with a sub-certification in cardiovascular disease, who opines to a reasonable degree of medical certainty, that the Moving Defendants performed a comprehensive evaluation of the Decedent; correctly interpreted the February 20, 2019 EKG and March 1, 2019 TTE; properly excluded heart defect and disease; did not need to perform any further testing; and Decedent’s outcome was not attributable to the care of the Defendant physicians. Specifically, Dr. Schneller opines that the care provided to the Decedent was at all times within the standard of care.

As to Dr. Schafer, it is the opinion of Dr. Schneller that Dr. Schafer performed a thorough assessment of the Decedent’s medical consultation of March 1, 2019. Dr. Schneller agreed with Dr. Schafer’s overall findings, as well as the scope of his evaluation. Dr. Schneller indicates that upon presentation, Dr. Schafer elicited the Decedent’s medical and family history, including her father’s history of coronary artery disease. Dr. Schafer also performed his own physical examination of the Decedent, the results of which were negative. Dr. Schneller agrees with Dr. Schafer’s testimony that based on the assessment of the patient and the results of her EKG and TTE, there did not appear to be a genetic component based upon her medical and familial history. Moreover, Dr. Schneller notes that the Decedent was very young and had no symptoms or cardiac complaints.

Dr. Schneller agrees with the interpretation that there was an acceptable ejection fraction; normal wall motion; and trace mitral/tricuspid regurgitation, all consistent with a LBBB with no

structural heart disease. Dr. Schneller explains that an EKG showing a LBBB does not, by itself, indicate a specific risk. The standard of care, therefore, is to perform an echocardiogram to rule out underlying structural heart disease. The comprehensive evaluation performed by the Defendant physicians, which included an EKG, clinical exam, and echocardiogram, met this standard.

It is also Dr. Schneller's opinion that LBBB is a common finding and does not require intervention or significant follow up in an asymptomatic patient. Its presence did not, in and of itself, identify a specific or additional risk. Dr. Schneller agrees that no structural heart disease was appreciated clinically or on the EKG or TTE. Dr. Schneller, therefore, opines that there was no objective evidence that Decedent was at risk for sudden cardiac death or acute arrhythmia. Consequently, Dr. Schafer's plan for one year follow up with repeat echo and reevaluation was appropriate and a proper exercise of reasonable judgment by Dr. Schafer.

Dr. Schneller agrees with Dr. Welch's formal interpretation and report of the echocardiogram and opines that it was substantively the same as that of Dr. Schafer, and in accordance with good and accepted interpretation. Absent findings of structural heart disease on the echo or symptoms consistent with poor cardiac function, Dr. Schneller opines that no immediate testing or workup was indicated. Notably, Dr. Schneller opines there is no objective evidence that the Decedent had the conditions diagnosed at autopsy when she was being treated by the Defendant physicians. Dr. Schneller, further notes that the Decedent's failure to return in one year for a follow-up EKG pursuant to the recommendation of her doctors, deprived the Defendants of the opportunity to re-evaluate her and potentially prevent her sudden death.

Based on Dr. Schneller's expert affirmation, the Court finds that the Moving Defendants have established prima facie entitlement to summary judgment as a matter of law as to Plaintiff's claim of medical malpractice.

In opposition, the Plaintiff submits the expert affirmation of a board-certified physician¹ in Internal Medicine, Cardiovascular Medicine, and Interventional Cardiology who opines, to a reasonable degree of medical certainty, that the Moving Defendants deviated from the standard of care and caused the Decedent's injuries and demise. Contrary to the contention of Defendants' expert, Plaintiff's expert opines that genetic testing would have revealed the genetic variant to cardiovascular disease. Genetic studies performed after the Decedent's death found a single heterozygous pathogenic variant of excess iron that is absorbed by the digestive tract and stored in various tissues, causing symptoms such as pain, lethargy, increased skin pigmentation, weight loss, arthritis, hepatic cirrhosis, diabetes, and cardiomyopathy. Specifically, Plaintiff's expert opines that based on the Decedent's familial history of coronary artery disease, "an [EKG] that demonstrated a prolonged QTc interval and left bundle branch block, concerning enough to be confirmed by a [TTE], a cardiac MRI should have been performed." According to Expert A, had a cardiac MRI been performed in or around March 2019, it would have identified the significant fibrosis that contributed to [Ms. Bardhyll's] sudden death. Further, Expert A opines that the Defendants' failure to perform a cardiac MRI was a breach of care. According to the expert, a cardiac MRI, prompted by her family history, and EKG and TTE results, would have likely led to the implantation of a defibrillator, which could have extended her life.

Significantly, Expert A has established through admissible evidence that given the Decedent's existing condition at the time she was being treated by Defendants, it is more probable than not that her chances for a recovery were diminished. Expert A opines that the failure of the Moving Defendants to recognize the urgency of her condition, combined with their failure to perform necessary tests and timely diagnose her condition, was a substantial factor in causing her

¹ Plaintiff has redacted the name of their expert pursuant to CPLR 3101(d), and shall be referred to as Expert A.

death from a fatal cardiac arrhythmia. This showing directly contravenes the assertion of the Moving Defendants that the claimed malpractice was not a substantial factor in bringing about the injury.

The expert affirmations of the respective parties raise triable issues of fact as to whether the appropriate tests and follow up tests were scheduled, Decedent was adequately informed of her condition and the associated risks, and Decedent would have had a substantial chance for a positive prognosis and recovery. “Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury” (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; see *Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

Accordingly, the Defendants’ motion for summary judgment as to Plaintiff’s medical malpractice cause of action is denied.

SUMMARY JUDGMENT AS TO PLAINTIFF’S REMAINING CLAIMS

The branch of the Moving Defendants’ motion seeking dismissal of Plaintiff’s wrongful death cause of action is denied. “When medical malpractice forms the basis of a wrongful death action in establishing that the defendant did not proximately cause the injuries alleged to have caused decedent’s death, a defendant establishes prima facie entitlement to summary judgment as to the wrongful death action as well” (*Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]). Here, Plaintiff rebutted the Defendants’ prima facie entitlement to judgment as a matter of law on the medical malpractice cause of action, thus, the wrongful death cause of action arising must be denied (*id.*).

Dismissal is also precluded as to Plaintiff's cause of action for loss of consortium, since it is derivative of the Plaintiff's right to recover damages for any injuries sustained as a result of the alleged malpractice of the Moving Defendants (*see Liff v Schildkrout*, 49 NY2d 622 [1980]).

With regard to the branch of the Defendants' motion regarding negligent hiring and supervision, generally, where an employee is acting within the scope of his or her employment, the employer is liable under the theory of vicarious liability, and the plaintiff may not proceed with a claim to recover damages for negligent hiring, retention, supervision, or training (*see Saretto v Panos*, 120 AD3d 786 [2d Dept 2014]; *Quiroz v Zottola*, 96 AD3d 1035 [2d Dept 2012]). While Dr. Welch and Dr. Schafer are cardiologists employed by Manhattan Cardiology, a claim for negligent hiring and supervision may only be made simultaneously with claims of vicarious liability when the plaintiff pleads gross negligence and punitive damages (*Talavera v Arbit*, 18 AD3d 738 [2d Dept 2005]). No such exception applies here, thus, the only basis for liability against Manhattan Cardiology is vicarious liability (*see Saretto v Panos*, 120 AD3d 786 [2d Dept 2014]; *Quiroz v Zottola*, 96 AD3d 1035 [2d Dept 2012]). Since triable issues of fact exist as to the care and treatment by Dr. Welsh and Dr. Schaefer and whether such treatment proximately caused Decedent's alleged injuries and death, dismissal is not warranted against Manhattan Cardiology under a theory of vicarious liability (*see Sessa v Peconic Bay Medical Center*, 200 AD3d 1085 [2d Dept 2021]; *Klippel v Rubinstein*, 300 AD2d 448 [2d Dept 2002]; *Rivera v County of Suffolk*, 290 AD2d 430 [2d Dept 2002]; *Mduba v Benedictine Hosp.*, 52 AD2d 450 [3d Dept 1976]).

Finally, Plaintiff's claim for lack of informed consent warrants dismissal as a matter of law, since Plaintiff's fail to plead, *inter alia*, that there was some unconsented-to affirmative violation of the Decedent's physical integrity (*see Hecht v Kaplan*, 221 AD2d 100 [2d Dept 1996]); see Public Health Law 2805-d[2][b]) (emphasis added). Here, the Plaintiff's claim for lack of

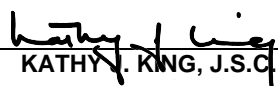
informed consent is legally insufficient since it is based on the Defendants' failure to test and diagnose rather than on a procedure performed without the Decedent's consent.

Accordingly, it is hereby

ORDERED that the Defendants motion is granted to the extent of dismissing the claims for lack of informed consent and negligent hiring and supervision, and denied in all other respects; and it is further

ORDERED that the Defendant is to serve a copy of this order upon the Plaintiffs with notice of entry within twenty (20) days of entry of this; and it is further

This constitutes the Decision and Order of the Court.

<u>10/8/25</u> DATE					 KATHY J. KING, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE